

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-368584-D1 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Gene O. BURTON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1754

Gene O. BURTON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 5 December 1967, an Examiner of the United States Coast Guard at San Francisco, Cal., suspended Appellant's seaman's documents for twelve months upon finding him guilty of misconduct. The specification found proved alleges that while serving as an AB seaman on board SS GOLDEN BEAR under authority of the document above captioned, on or about 2 March 1967, Appellant wrongfully assaulted and battered a fellow member of the crew, one Henry Taylor, by cutting him with a knife.

At the hearing, Appellant was represented by professional counsel but did not appear in person. Appellant's counsel entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and voyage records of GOLDEN BEAR.

Counsel for Appellant, on 29 March 1967, asked for time to obtain Appellant's personal appearance. On reconvening of 24 October 1967, counsel advised that he had been unable to communicate with Appellant, and asked for more time. Continuance was granted until 28 November 1968, with the understanding that if no communication with Appellant were established by that date, the case "would be submitted,"

On 5 December 1967 (with on record of any proceedings on 28 November 1967), the Examiner entered a decision and order suspending Appellant's documents for a period of twelve months. This decision was served on 6 May 1968. On 28 May 1968, in response to a petition to reopen the hearing filed on 9 May 1968, the Examiner conducted a proceeding, at which Appellant appeared, accompanied by new counsel, to determine whether the petition to reopen should be granted. Appellant's position was that his own testimony on the substantive issue was "newly discovered evidence"

such as to justify reopening, and that his former counsel had been unable to communicate with him because he had been almost continuously at sea. At the conclusion of proceedings on 26 May 1968, the Examiner reserved decision as to the petition to reopen.

If ruling on the petition was made, it was not made on the record. However, on 3 June 1968, Appellant filed notice of appeal from the decision and order of 5 December 1967. No reference was made in the notice of appeal to the petition to reopen. It must be assumed that the petition to reopen was denied off the record and that this ruling is not being challenged.

By the conditions of his appeal, Appellant had until 9 January 1969 in which to perfect his grounds. Nothing has been received since the notice of 3 June 1968.

FINDINGS OF FACT

On 2 March 1967, Appellant was serving as an AB seaman on board SS GOLDEN BEAR and acting under authority of his document while the ship was at Manila, R. P.

At about 0730 on that date, Appellant, without provocation of any kind, drew a sheath knife and cut Henry Taylor, night cook and baker, across the chest and left arm. This occurred in the galley. Taylor had to be removed from the ship for hospitalization.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

- (1) the decision is contrary to law;
- (2) the evidence is insufficient to support the findings; and
- (3) Appellant was denied a fair and impartial hearing.

APPEARANCE: Jennings, Gartland and Tilly, San Francisco, Cal.,
by Eugene L. Gartland, Esq.

OPINION

I

The first asserted ground for appeal cannot be seriously accepted. It is said that the "Decision is contrary to law." No effort is made to show how the decision is contrary to law, or

which law, law, or body of law it might be contrary to. Since no specific direction is given, no indiscriminate speculation will be undertaken.

II

The statement that "the evidence is insufficient to support the Order and Findings of this Examiner" is construed as an assertion that the Examiner's findings are not based on substantial evidence. Since no defects in the evidence are asserted, a cursory view is enough. The Examiner's findings were predicated primarily on the testimony of two eyewitnesses, one of who was the victim. The Examiner found their testimony credible and was not even faced with contrary evidence. The evidence was thus substantial, reliable, and probative, and it does support the Examiner's findings.

III

Appellant does not specify, in any way, how he was denied a fair and impartial hearing. Review of the record indicates that he was informed of his rights and that the Examiner granted him hearing on petition to reopen on grounds that were, even as asserted in the petition itself, insufficient. Even as Appellant urges no reasons as to how he was denied on impartial hearing, the record demonstrates that he was treated more "fairly" than he deserved.

ORDER

The order of the Examiner dated at San Francisco, Cal., on 5 December 1967, is AFFIRMED,

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 13th day of MARCH 1969.

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